

## **CHAPTER XI. IMPACT OF THE BASIC PILOT PROGRAM ON UNAUTHORIZED EMPLOYMENT**

### **A. INTRODUCTION**

#### **1. ABOUT THIS CHAPTER**

A primary objective of the Basic Pilot system and procedures is to identify employees who are not authorized to work in the United States while avoiding labeling work-authorized employees as unauthorized. Chapters VII through IX discuss issues related to the question of whether the system causes harm to work-authorized employees. This chapter focuses on the question of whether the pilot program met the goal of reducing employment among individuals who are not work-authorized, as envisioned by the framers of the Immigration Reform and Control Act of 1986 (IRCA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This chapter also examines a related evaluation question specified in the IIRIRA legislation: “What is the impact of the pilot program on false attestation of U.S. citizenship?” The related issue of the likely impact on illegal immigration of a larger scale program similar to the Basic Pilot program is discussed in Chapter XII.

Because the Basic Pilot compares employee information with Federal database information, it should be superior to the Form I-9 process in deterring the employment of persons who present fraudulent documents and make false claims to U.S. citizenship. However, the Basic Pilot is not designed to detect unauthorized workers who use stolen, borrowed, or counterfeit documents with valid information, and the pilot will generally not perform better than the Form I-9 system in this respect. The rate of identity fraud might increase under the Basic Pilot system, as unauthorized workers realize that using borrowed or counterfeit documents with valid information is less likely to be detected than using fraudulent documents with fictitious information. Because the program verifies documentation for both citizens and noncitizens, it is likely to affect the false attestation of U.S. citizenship as well as false claims of being a work-authorized noncitizen.

It is difficult to study these complex issues empirically within the context of a small-scale pilot program. As long as pilots cover only a small percentage of the employers within a particular labor market, an employee who is not verified using the Basic Pilot program will have many alternative employment opportunities. This situation is especially likely in tight labor markets, such as the one that existed when the data were collected for this study in the second half of 1999.

The evaluation team relied on several sources of information in preparing this chapter. These sources included analyses of the Basic Pilot database, the employer surveys, the employee interviews, and SSA and INS record reviews for a small group of cases. Relevant research literature was examined to obtain additional insights into the likely impacts of the Basic Pilot program on the employment of undocumented workers and illegal immigration. The evaluation team also used these sources to develop an estimate

of the number of undocumented workers who the Basic Pilot program deterred from continuing their employment with participating employers.

## **2. BACKGROUND: HOW UNAUTHORIZED WORKERS CURRENTLY FIND JOBS**

To understand the implications of the Basic Pilot program for the employment of unauthorized workers, it is helpful to understand the employment options currently open to individuals who are not authorized to work in the United States. This section describes three such options: using counterfeit documents to prove identity and/or work authorization, using real documents that belong to another person, and finding alternative employment with a non-pilot employer.

### ***a. USING COUNTERFEIT DOCUMENTS***

Individuals without work authorization frequently obtain work by using counterfeit or altered documents. As Cornelius has reported, these documents are readily available for purchase in immigrant communities:

“...among recent [post-January 1, 1982] migrants interviewed in our Mexican research communities, 25 percent admitted that they had used false documents to gain employment during their most recent trip to the United States, paying a median price of [U.S.] \$50 for them. Undoubtedly, this figure is an underreport of actual behavior, because many of our interviewees made it clear that they consider the use of bogus documents to be an unsavory business. Moreover...the majority of interviewees were aware that they are subject to criminal penalties under IRCA if they attempt to use such documents to gain employment in the United States.”<sup>137</sup>

The magnitude of this business is also reflected in a 1998 news release in which INS reported seizing more than 2 million fraudulent identification documents, including high-quality Resident Alien Cards, Social Security cards, and driver’s licenses from nine States. INS estimated the “street value” of these documents at between \$40 and \$200 each. INS continues to make regular seizures of fraudulent immigration and other documents that can be used to demonstrate identity and work authorization in the Form I-9 verification process.

Current employment verification procedures require the employer to certify on Form I-9 that the documents presented by the recently hired employee “...appear to be genuine...”<sup>138</sup> In this situation, the likelihood of an employer detecting counterfeit documents depends on the quality of the document and the employer’s expertise in detecting fraudulent documents.

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<sup>137</sup> Cornelius, 1990 (p. 234).

<sup>138</sup> Form I-9 is included in Appendix A.

The Basic Pilot program adds the extra step of checking whether the information on the employee's documents is consistent with information in the records of SSA and, where relevant, INS. Assuming that these record checks work as intended, they will assist employers in detecting counterfeit documents containing information about fictitious persons.<sup>139</sup> If, however, the counterfeit documents are of reasonable quality and contain information about real work-authorized persons, the Basic Pilot system does not provide employers with information to assist them in making accurate determinations.

***b. USING ANOTHER PERSON'S DOCUMENTS***

A second way for undocumented immigrants to obtain work is to use real documents belonging to another person.<sup>140</sup> For example, individuals may borrow documents belonging to relatives or friends with similar characteristics. To decrease the probability of this happening, employers are required to certify on Form I-9 that the documents "...relate to the employee named..." The Basic Pilot system is not designed to identify these documents as fraudulent because they are, in fact, genuine. Employers can only rely on the extent to which the information (such as photograph, fingerprint, and signature) on the documents resemble the employee.

***c. FINDING ALTERNATIVE EMPLOYMENT***

Another way that unauthorized workers can obtain employment is to take jobs where employment verification is not rigorous. Many non-pilot employers might fall into this category, especially if they are confident that INS will not audit them. According to an INS official in the Office of Investigations, for instance, it is less likely that INS will audit individuals who employ service workers in their homes or who run businesses that pay "off the books." Further, some employers may be unaware of their responsibility to verify work authorization for their employees. Early in the enforcement of employer sanctions, this latter situation was more prevalent among small businesses than among larger ones.<sup>141</sup> Undocumented immigrants who are self-employed<sup>142</sup> could also circumvent the employment verification system, because they are not required to

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<sup>139</sup> The caveat in this sentence reflects the fact that Immigration Status Verifiers (ISVs) may make mistakes during the verification process. For example, ISVs often assume that all Cuban nationals are work-authorized without checking further.

<sup>140</sup> Situations in which individuals use another person's identity (whether by using real documents belonging to that person or by using counterfeit documents with information about that person) are sometimes grouped together under the heading of "identity fraud." To facilitate communication with respondents in this study and to ensure that cases of identity fraud involving counterfeit documents were not double-counted, the evaluation team considered counterfeit documents separately from documents belonging to another person.

<sup>141</sup> The General Accounting Office (1990a) found that "the smaller the employer, the less often they said they were aware of the law and the less they understood IRCA's sanctions provisions."

<sup>142</sup> According to the Small Business Administration, approximately 7.2 percent of the civilian workforce are self-employed ("Small Business Frequently Asked Questions Card," <http://www.sba.gov>, accessed March 20, 2001).

complete I-9 forms for themselves. Other possible sources of jobs are the underground economy and criminal activity.

## **B. EFFECTIVENESS OF THE BASIC PILOT PROGRAM IN DETERRING UNAUTHORIZED EMPLOYMENT**

### **1. EVIDENCE THAT THE BASIC PILOT PROGRAM DID PREVENT SOME NON-AUTHORIZED INDIVIDUALS FROM WORKING AT PILOT EMPLOYERS**

Theoretically, the Basic Pilot system could reduce the employment of individuals without work authorization in several ways:

- The Basic Pilot system might determine that certain employees are unauthorized to work and the employer might terminate employment.
- Unauthorized employees might receive tentative nonconfirmations and not contest them, thus becoming ineligible to work for the pilot employer.
- Unauthorized workers might decide to avoid the records checks with SSA and INS by not applying for a position with a Basic Pilot employer.

Each of these situations is discussed below.

#### ***a. EMPLOYEES FOUND TO BE UNAUTHORIZED***

An analysis of the Basic Pilot transaction database provides a good estimate of the percentage of employees determined to be unauthorized to work.<sup>143</sup> However, as indicated in Chapter IV, the system rarely determines that individuals are unauthorized. Fewer than 0.1 percent of employees who completed the verification process through the Basic Pilot system were ultimately found to be unauthorized to work. However, it is reasonable to assume that many unauthorized workers who learned of tentative nonconfirmations did not contact SSA or INS to complete the verification process.

#### ***b. UNAUTHORIZED WORKERS WITH UNRESOLVED FINDINGS***

*Reasons for unresolved findings.* Analysis of the transaction database indicated that 13 percent of employees screened by the Basic Pilot system did not receive a final status of either authorized or unauthorized. These individuals received a tentative nonconfirmation, but for one reason or another did not contact the Federal Government about their status within 10 days. These workers may or may not have had work authorization.

Findings from the employee interviews suggest that many employers did not inform their employees of tentative nonconfirmation findings. As discussed in Chapter V, some employers may not have informed employees of tentative nonconfirmation findings

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<sup>143</sup> See Chapter V for a more detailed discussion of the possible outcomes of the verification process.

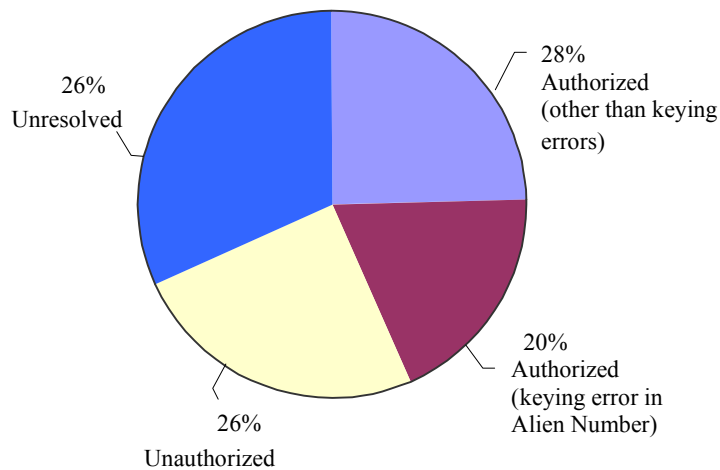
because they were using the system to prescreen applicants. However, 82 percent of the roughly three-quarters of respondents who were offered and accepted work with the pilot employer and who had a final nonconfirmation finding reported that they were not notified about the finding. Undoubtedly, in some of these cases employees did not recall being notified or were reluctant to admit having had a problem. However, since some tentative nonconfirmation cases are resolved, it is reasonable to assume that some of the workers not notified of a tentative nonconfirmation were, in fact, work-authorized.

Among employees who were notified of a tentative nonconfirmation, some undoubtedly decided not to contest the finding because they knew their documents were fraudulent. However, other tentative nonconfirmation cases involved work-authorized employees who decided not to contest the tentative nonconfirmation. Additionally, the employee or the employer may have terminated employment before the case could be resolved, for reasons unrelated to the Basic Pilot program. The likelihood of non-pilot-related terminations is much higher among Basic Pilot employers than other employers, because pilot employers have, on average, larger numbers of employees in job categories with high turnover rates.

Finally, some of the transaction database cases are probably incorrectly classified as “not resolved” cases. This misclassification could occur when employers make keying errors without closing the cases properly. The evaluation team may also have misclassified some cases when constructing the transaction database from the data files provided by SSA and INS.

*Followup of INS final nonconfirmation cases.* To better understand final nonconfirmation outcomes, the evaluation team looked further into the work-authorization status of the 95 employees who participated in the employee interviews and who had a verification outcome of INS final nonconfirmation but did not contact INS to resolve the problem. The INS Central Index System and mission systems (such as the Deportable Alien Control System and the Refugee, Asylum, and Parole System) were checked to determine the work-authorization status of these individuals at the time they were verified by the employer. As shown in Exhibit XI-1, the additional checks showed that nearly half of employees whose work-authorization status was not resolved (48 percent) were in fact work-authorized at the time the employer checked them through the Basic Pilot system. More than 40 percent of these work-authorized employees would have been correctly identified as work-authorized had the employer not made a keying error in entering the Alien Number.

**Exhibit XI-1: Actual Work-Authorization Status of 95 Interviewed Employees with Final Nonconfirmation Outcome**



SOURCE: Review of Employee INS Records

This analysis of the 95 cases confirms that the final nonconfirmation categories on the transaction database include both work-authorized and non-work-authorized employees. This approach cannot be used to estimate the percentage of all employees with final nonconfirmation findings who are work-authorized because it is representative of only a small subgroup of employees with unresolved cases. Most importantly, this analysis excludes the 91 percent of unresolved cases that SSA did not send to INS.

During the employee interviews, respondents were asked about their work-authorization status. Three percent of employees reported that they were not authorized to work when they were hired or applied for a job with the Basic Pilot employer. Another 5 percent of employees did not answer the question. It is likely that many employees in this latter group did not wish to admit their unauthorized status. Employees without work authorization were probably less likely than work-authorized employees to participate in the survey and, if they did, to be truthful in answering this question. The evaluation team therefore concluded that 8 percent is likely to be a more accurate estimate of the rate of unauthorized employees verified by the Basic Pilot system.

The evaluation team also developed a procedure to estimate the total number of unauthorized workers verified by Basic Pilot employers. The team made assumptions about the rate at which employers notified employees of tentative nonconfirmation findings and the percentage of work-authorized employees who contested the finding, based on the resolution rates for different kinds of employees. Using this methodology, the evaluation team estimated that 10 percent of all cases submitted to the Basic Pilot system for determination of work-authorization status were employees who were not authorized to work at the time they were hired. Because the Basic Pilot employers are in States and industries with higher than average numbers of undocumented immigrants, the percentage of unauthorized workers would likely be considerably lower elsewhere. On the other hand, this estimate does not include workers using counterfeit or borrowed

documentation with valid information, who would not be detected by the Basic Pilot system.

***c. UNAUTHORIZED WORKERS AVOIDING APPLYING TO PILOT EMPLOYERS***

As described above, the Basic Pilot may deter unauthorized employment when unauthorized employees are either determined to be ineligible or decide to quit rather than contest a preliminary nonconfirmation finding. In addition, the Basic Pilot program may decrease unauthorized employment by discouraging employees from ever applying to pilot employers. Employers participating in the Basic Pilot are required to display pilot program and anti-discrimination notices in locations where job applicants and new employees will see them.<sup>144</sup> Some unauthorized workers may be deterred from applying to pilot employers when they see these notices. Other employees may never apply to a pilot employer because they have heard that the employer is verifying documents with SSA and INS.

There is no practical way to identify workers who would have applied to pilot employers if the Basic Pilot program had not been in effect, making it impossible to estimate the effect of the program on job applicants. However, many pilot employers report that the program is reducing the number of unauthorized workers applying to their establishments. In the mail survey, 64 percent of pilot employers agreed or strongly agreed with the following statement: “The number of unauthorized workers who apply for jobs decreases when the Basic Pilot verification system is used.”

The results from on-site interviews with pilot employers are consistent with these findings. Ninety-five percent of these employers agreed that the Basic Pilot program has reduced the likelihood that their establishments might unknowingly employ persons unauthorized to work in the United States. In clarifying their reasoning, more than half of the respondents explained that the Basic Pilot program verifies work authorization and 18 percent indicated that the program deterred persons without work authorization from applying at their establishments.

**2. LIMITATIONS IN THE BASIC PILOT’S ABILITY TO DETER UNAUTHORIZED EMPLOYMENT**

The designers of the Basic Pilot program recognized that the system cannot detect identity fraud and that a computerized system can confirm only that personal data are accurate and consistent with the information in Federal databases.<sup>145</sup> The Basic Pilot System is limited in that it relies on employer judgments that the identity and work-authorization documents are valid and belong to the person presenting them and not on an electronic comparison of fingerprints or other biometric identifiers.

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<sup>144</sup> Half of the employers participating in the on-site survey had complied with this requirement.

<sup>145</sup> This issue is discussed in more detail earlier in this chapter.

In the words of one Federal official:

“The Achilles heel of the [Basic Pilot Program]...is the easy availability of the true imposter situation. You can buy, without too much trouble at all, an identity set, a real identity in south Texas; for example, a birth certificate, a photo that looks like them, and ID card such as a Social Security card, a driver’s license, or a non-driver ID. This is a major industry; they retrieve these false documents by the hundreds of thousands. So I think the system does well given that problem. And the only way to catch them, other than much more secure documents on a national basis, is to be a lot more forceful with audit.”

It is also possible that the Basic Pilot system might lead to improvements in the quality or validity of information used on fraudulent documents, allowing more undocumented workers to be confirmed even under the enhanced employment verification procedures. Indeed, in the opinions of some INS officials, the fraudulent document business may have already responded to the pilot system. The following are examples of their responses to a question about the impact of the Basic Pilot system on fraudulent documents:

“It’s forcing those who are trying to beat the system to become more sophisticated...”

“Fraud adapts to meet circumstances. Fraud appears to be moving from false documents towards false identity.”

Only 1 percent of interviewed pilot employees admitted to presenting a false document or a document that belonged to another person; however, it is likely that the actual rate is higher. Unauthorized workers are presumably less likely than authorized workers to respond to a survey supported by INS. Further, even if they do participate, they may decide not to disclose the use of fraudulent documents, which is a deportable offense.

Although the evaluation provides clear evidence that the Basic Pilot program prevented some non-work-authorized individuals from finding employment with pilot employers, most of these employees may simply have found jobs with non-pilot employers. Not only did the Basic Pilot program include only a small percentage of employers in any community, but the strong economy in existence during the observation period made it easier for employees to find alternative employment.

Further, as noted above, non-work-authorized employees have work options not affected by the procedures used in the Basic Pilot program. For example, they can become self-employed or work for employers who do not adhere strictly to the law.

### **3. CONCLUSION**

In sum, the Basic Pilot program appears to reduce unauthorized employment that arises when employees present counterfeit or altered documents containing fictitious information. However, it does not assist employers in identifying cases of identity fraud. The assistance of the Basic Pilot program to employers is, therefore, affected by the relative frequency of counterfeit fraud versus identity fraud.

It is not possible to estimate accurately the percentage of cases that can be described as counterfeit fraud, identity fraud, or a combination of the two (i.e., counterfeit documents containing valid information about another person). When pilot employers were asked about their experiences, almost three-quarters (73 percent) had encountered at least some counterfeit documents over the past year (containing information about either fictitious or real people), while 59 percent reported detecting identity fraud involving valid documents.

### **C. FALSE ATTESTATION OF CITIZENSHIP**

The Basic Pilot program is designed to prevent false attestation of citizenship as well as fraudulent claims related to the work-authorization status of noncitizens. The level of false attestation to U.S. citizenship detected by the pilot is, however, low. As discussed in Chapter VII, when I-9 forms sampled from pilot employers were compared with information from SSA, only 2 percent of the I-9 forms that indicated U.S. citizenship did not match SSA data. This discrepancy between the I-9 form and the SSA database may have several causes, including a change in citizenship status not reflected in the SSA database, an honest mistake in checking the wrong citizenship box, or false attestation to U.S. citizenship.

The very fact that the Basic Pilot checks employee information for all workers, citizen and noncitizen alike, may deter employees who otherwise might try to falsely claim citizenship. Moreover, if an unauthorized worker does falsely attest to U.S. citizenship, he/she will need a valid Social Security number belonging to a citizen, as well as some form of documentation with matching information.

### **D. SUMMARY**

This chapter has discussed the potential impact of the Basic Pilot program on the number of non-work-authorized individuals who are able to obtain work at pilot employers. It has also briefly examined a related question concerning the program's effect on fraudulent attestation of U.S. citizenship.

The Basic Pilot program appears to have reduced the number of non-work-authorized individuals working at participating establishments. The evaluation team estimated that approximately 10 percent of employees screened by the Basic Pilot program are undocumented workers who received a tentative nonconfirmation or, more rarely, were determined to be unauthorized. Additionally, some undocumented job seekers probably avoided applying to pilot establishments, either because they saw the posted pilot program notice or because they had learned about the employer's participation through other means.

The Basic Pilot program rarely identified employees who had fraudulently attested to U.S. citizenship. Given the procedural similarities in the treatment of citizens and noncitizens, there is no reason to believe that this particular pilot affected the relative frequency of fraudulent attestation of citizenship in comparison to the use of other forms of fraudulent documents.

Given the limited scope of the Basic Pilot program, it could not have measurably reduced the flow of undocumented immigrants on a national basis. The evaluation team did not, therefore, attempt to collect empirical information to address this question. A more general discussion of this issue is included in Chapter XII.